

Date Issued: July 31, 1986 (AGO 86-23)

Requested by: Honorable Layton W. Freborg
State Senator, District 8

- QUESTION PRESENTED -

Whether a person, as a result of an election nomination process, may cause his or her name to appear on the same election ballot as a candidate for more than one office.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a person, as a result of an election nomination process, may not cause his or her name to appear on the same election ballot as a candidate for more than one office.

- ANALYSIS -

The questions as to multiple candidacies received most often in this office are phrased in terms of whether one may "run" for more than one office at the same election. The use of the term "run" is unfortunate as it is not altogether clear as to its significance or scope. There are no North Dakota statutes which prohibit one from "running" for more than one office. However, there is the prohibition contained within N.D.C.C. section 16.1-12-03 which states, in part, as follows:

16.1-12-03. CERTIFICATE OF NOMINATION TO CONTAIN ONLY ONE NAME
- PERSON TO PARTICIPATE IN ONLY ONE NOMINATION. . . .no person
shall accept a nomination to more than one office. . . .

Therefore, the essential question is not whether one may run for more than one office, but whether one may accept a nomination to more than one office. This statute clearly states that one may not accept a nomination to more than one office. However, it must be determined when does one accept a nomination to an office.

In reviewing the election laws of our state, I conclude that one is able to seek election to a public office through the nomination process principally by either one of two means: either a person presents to the appropriate election official a certificate of endorsement signed by the district chairman of any legally recognized political party, or a person presents a petition containing signatures and other information. N.D.C.C. sections 16.1-11-06, 16.1-11-11. Upon receipt of either a petition or certificate of endorsement, containing the statutorily required information, the appropriate election official shall place the applicant's name upon the primary election ballot. N.D.C.C. sections 16.1-11-10, 16.1-11-12. Where the appropriate election official has placed the applicant's name on the primary election ballot as a result of the receipt of either the petition or certificate of endorsement, it is my opinion that the person named within either the petition or the certificate of endorsement has accepted a nomination to a public office.

There is a third method by which one may accept a nomination to a

public office. N.D.C.C. section 16.1-11-35 provides for nominations by write-in votes occurring at the primary election. Obviously, where persons are nominated as a result of sufficient votes received at the primary election following the writing in of their names, they have then accepted the nomination for that office.

In summary, the important sentence of N.D.C.C. section 16.1-12-03 (" . . .and no person shall accept a nomination to more than one office. . .") refers to a different event depending upon the nature of the office sought. For partisan offices, a person accepts a nomination where he presents to the appropriate election official the certificate of endorsement and the official, in return, places the name of the applicant upon the primary election ballot. For persons seeking nonpartisan public offices, those persons accept a nomination for a public office when they present to the appropriate election official a petition causing their name to be placed upon the primary election ballot. Finally, with respect to persons who may be nominated by a write-in campaign, they accept a nomination when they receive their certificate of nomination following the primary election.

Based upon these conclusions, the prohibition against a person accepting a nomination to more than one office prohibits a person from the following actions:

1. Submitting more than one certificate of endorsement to the appropriate election official resulting in his name being placed upon the ballot for more than one office.
2. Submitting more than one petition to the appropriate election official resulting in his name being placed upon the ballot for more than one office.
3. Submitting a certificate of endorsement for one office and a petition for another office to the appropriate election official resulting in his name being placed upon the ballot for more than one office.
4. Successfully completing the nomination process by the petition or certificate of endorsement method for one office and receiving a certificate of nomination as a result of a write-in campaign for yet a separate office.
5. Receiving two or more certificates of nomination as a result of write-in campaigns.

In conclusion, the prohibition contained within N.D.C.C. section 16.1-12-03 as to the acceptance by one person of a nomination to more than one office prevents a person from engaging in an election nomination process and, as a result of that process, causing his or her name to appear on the same election ballot as a candidate for more than one office.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the

question presented is decided by the courts.

NICHOLAS J. SPAETH
Attorney General

Assisted by: Terry L. Adkins
Assistant Attorney General